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May 24, 2022

VIA OVERNIGHT MAIL

Township of North Brunswick
710 Hermann Road
North Brunswick, New Jersey 08902
Attn: Andrei Alexeev, Zoning Officer

**Re: 2nd SUBSTANTIAL CHANGE LETTER for
Application of Carone Auto, LLC
For Property Located at 1020 Apache Street
Block 82, Lots 4.02, 7.01(new), 10.01(new), 11 and 12
Township of North Brunswick**

Dear Mr. Alexeev:

As may recall I represent CarOne Auto LLC, the Applicant, with respect to an application to permit used auto sales at their existing auto repair facility, located at the above-referenced property, in the R-3 zone. On April 20, 2021 the North Brunswick Zoning Board of Adjustment held a hearing at which it determined that the revised plan then put forward by the Applicant was barred due to *res judicata* since it did not constitute a sufficiently substantial change over our application that was denied in June of 2019. The Applicant file an appeal in NJ Superior Court with respect to the Board's decision and that matter is still pending. We now submit a second revised plan. As indicated below this 2nd revised plan clearly depicts a substantial change to the application previously before the Board. In addition, the fees requested with respect to the 1st revised plan are again enclosed.

The Applicant is still seeking use variance approval for a substantially modified plan to permit auto sales at the site, together with site plan approval to for the reconfigured plan to permit upgraded parking, both for customers and employees, as well as for a storage area for vehicles in inventory. However, our application now incorporated two additional lots, Lots 7.01 and 10.01 which both increase the area incorporated in the facility and allow all access to the facility to be directly and only to and from Grove Street.

As you are likely aware *res judicata* only applies where the subsequent proposal put forward after a Board's decision incorporates no substantial change from the application upon which the Board acted. Generally, when evaluating the application of *res judicata* to a case involving a use variance a major differentiator can be the proposed intensity moreover when an application involves additional property and a change to the street from which facility would be accessed there is clearly a substantial change.

In this case, the major focus of the Board and its staff during the review process to date, and the initial hearings in this matter, with respect to intensity of the proposed use at the site. With respect to car sales use intensity can be at least partially evaluated by the number of vehicles to be permitted under the requested relief.

The submitted plans show our current proposal significantly reduces the intensity of the proposed use. When filed, the Applicant originally request a storage area for 51 cars and paved parking for 29 cars (total of 80 cars on site). During the review of the application the Applicant agreed to reduce the number of cars to a 28-car storage area and 28 paved parking spaces on site (total of 56 cars on site). The revised site plan now submitted reduces the car storage area to 24 vehicles (and the paved spaces to 17 - for a total vehicles on site of 41) while increasing the total area available to accommodate the facility, through the addition of the two lots, from 28,000 sq. ft. to 35,000 sq. ft.

The revised plan also address other concerns raised by the Board by providing a space for snow removal, adding significant new separation and buffering from the adjoining existing residential uses (for instance the storage area would now place stored cars 85' from the property line where previously the applicant had requested 30' and the previously proposed parking between the existing building and the residence adjoining the existing building would be eliminated thereby adding slightly more than 22' of additional buffer to the previously proposed 7.9' of buffer for a new buffer of 30.1' from the home on Lot 4.01 to the nearest pavement on the Applicant's site). Further the redesign of the site to eliminate site access from both Spring and Apache Streets and permit all access to the site to be to and from Grove Street should be consider a significant change even consider in the absence of the other changes. I would also note that the applicant would agree as a condition of an approval to work to limit repair work on site to only work on vehicles in inventory and being readied for sale. Thus, the revised plan provides at least four modifications that each individually qualify as substantial changes. Those substantial modifications are 1) the decreased intensity of the proposed use; 2) the Applicant's agreement to cease providing auto repair to the public at the site as a condition of approval; 3) the redesign of the site to be accessed from Grove Street, eliminating all access from Spring and Apache Streets to the site; and 4) the addition of more land and lots to the application.

Specifically we now seek permission for: (1) A use not permitted in zone D-1 (and/or D-2 Use Variance - Expansion of non-conforming use); (2) Storage of 16 cars in front yard area adjoining Spring and Grove Streets together with 13 paved parking spaces in the front yards adjoining Grove and Apache Streets; (3) an approximately 4' buffer to the pavement as the driveway passes the west corner of the existing building where 30' is required but only approximately 3' buffer is currently provided; (4) Stone/gravel "pavement" proposed for auto inventory storage area; (5) A variance to permit the relocated site driveway to be located 70.3 feet from Spring Street and 69.2 feet from Apache Street where 100' would be required and (5) any other relief necessary to permit development of the site as consist with the application and plans.

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Accordingly, attached please find the following:

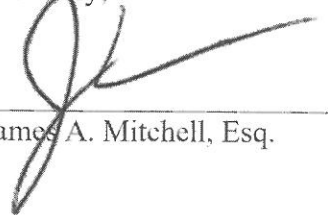
Fifteen (15) revised, full size, signed and sealed plans and fifteen (15) revised, reduced (11" x 17") signed and sealed plans, prepared by Amertech Engineering, Inc., Sharif H. Aly, PE, revised though 5/16/22.

One (1) check, payable to North Brunswick Township, in the amount of \$300.00 for the application fee; and

One (1) check , payable to North Brunswick Township, in the amount of \$750.00 for the escrow deposit.

Please feel free to contact me if you have any questions, or if you require anything further.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Mitchell', written over a horizontal line.

James A. Mitchell, Esq.

JAM/km

Enclosures

cc: CarOne Auto, LLC
NB ZBA Attorney